Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

GUY and BONNIE L. ADAMS (and others listed as parties), on their own behalf and on behalf of, and as Class Representatives of, all other persons similarly situated,

Petitioners,

v.

BURLINGTON NORTHERN RAILROAD COMPANY
and
BURLINGTON NORTHERN INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 94-35461

D.C. No.
CV-93-01590-WLD

GUY ADAMS; BONNIE L. ADAMS; TIMOTHY ADAMS; CLIFTON ALBRIGHT; JANET ALLOT, et al; MARVIN KLEIN; MARY LOU MILLER; DWIGHT W. WILLIAMS; JO ANN PETERSON; IGNACIA FUENTES; RUSSEL PETERSON; JANET PETERSON; CENTRAL LIFE ASSURANCE CO.,

Plaintiffs-Appellants,

v.

BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware Corporation; BURLINGTON NORTHERN, INC., a Delaware Corporation,

Defendants-Appellees.

Appeal from the United States District Court
Western District of Washington
William L. Dwyer, District Judge, Presiding

OPINION

No. 94-35618

D.C. No.
CV-93-1827-JCC

GUY D. ADAMS; HERB BAILEY; BARNTS MEDICAL SPECIALTIES; BENEFIT TRUST LIFE INSURANCE CO.; TOM BRADLEY; DONALD L. BROOKHART; CENTRAL LIFE ASSURANCE CO.; RUSSEL L. CLARK; DMN, INC.; RAY EIFORD; SHERMAN A. HILL; BRYCE A. JAMES; FRANK C. JONES; ALAN RUSSELL KAHN; ROBERT M. KEENHOLTS; MANHATTAN LIFE INSURANCE COMPANY; STANDARD INSURANCE COMPANY; ELLIS R. STANLEY; TRUSTMARK LIFE INSURANCE COMPANY; UNION CENTRAL LIFE INSURANCE CO.; IRENE E. WALTERS; WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY; JOHN H. ZYBURA,
on their own behalf and on behalf of and as
Class representatives of
all other persons similarly situated,

Plaintiffs-Appellants,

v.

CSX TRANSPORTATION, a Virginia corporation,

Defendant-Appellee.

Appeal from the United States District Court
Western District of Washington
John C. Coughenour, District Judge, Presiding

Argued and Submitted
September 14, 1995 – Seattle, Washington

Filed April 10, 1996

Before: Arthur L. Alarcon and William C. Canby, Circuit Judges, and James M. Fitzgerald,* District Judge.

Opinion by Judge Canby

COUNSEL

Camden M. Hall, Seattle, Washington; Geoffrey P. Knudsen, Ann Mary Holmes, Donald B. Myers, Stoel, Rives, Boley, Jones & Grey, Seattle, Washington, for the plaintiffs-appellants.

Kurt W. Kroschel, Kurt W. Kroschel & Assoc., Bellevue, Washington; Robert D. Joffe, Cravath, Swaine & Moore, New York, New York; Bruce D. Corker, Seattle, Washington; Harvey R. Chappel, Paul W. Jacobs, Tracy J Walker, Christian, Barton, Epps, Brent & Chappel, Richmond, Virginia, for the defendants-appellees.

OPINION

CANBY, Circuit Judge:

These cases arise from the efforts of bondholders to enforce "gold clauses" in railroad bonds issued almost a century ago. A gold clause requires payment of the bond's obligations in gold dollars valued at the time the obligation was undertaken. In 1933, Congress rendered such gold clauses unenforceable, 48 Stat. 112, 113 (1933), but then permitted them again in 1977, 91 Stat.

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*The Honorable James M. Fitzgerald, Senior United States District Judge for the District of Alaska, sitting by designation.

1227, 1229 (1977). The issues presented here are whether the 1977 legislation revived these ancient gold clauses, and whether various actions of the parties have created new, post-1977 obligations payable in gold. Our answer to both questions is "no."

The bondholders brought a class action to force the Burlington Northern Railroad Company ("Burlington Northern" or "Railroad") to pay the interest and principal of its gold bonds, issued in 1896 and 1921, in gold coin. Class representative Guy Adams appeals the district court's dismissal of the action under Fed. R. Civ. P. 12(b)(6) and 56. Because of the identity of issues in this case and *Adams v. CSX Transportation, Inc.*, No. 94-35618, an appeal from the district court's dismissal of a class action to enforce the gold clauses in CSX Transportation ("CSXT") bonds, we consolidate the cases for purposes of this opinion. This Court has jurisdiction under 28 U.S.C. § 1291. We affirm the decisions of the district court in both cases.

BACKGROUND

In 1896 and 1921, respectively, the Northern Pacific Railway and the Great Northern Railway Company issued millions of dollars in "Gold Bonds" to finance their expansion in the Midwestern and Northwestern states. The bonds each contain a "gold clause," requiring the obligor to pay upon maturity "the [face value number of] Dollars, *gold coin* of the United States of America *of the present* [1896 or 1921] *standard weight and fineness*." The clause also calls for annual interest payments at a rate of between three and four per cent, depending on the issue, to be made "in like gold coin."

Nearly $92 million of the Northern Pacific bonds and approximately $62 million of the Great Northern bonds

remain outstanding. The bonds mature between January 1, 1997 and January 1, 2047. The Burlington Northern became obligor on these bonds in 1970, when Great Northern and Northern Pacific merged into it. Both issues trade on the major exchanges, at prices reflecting the market's belief that the Burlington Northern will continue to pay its obligations in current legal tender, rather than in gold coin of the relevant period. If the method of payment were to return to gold coin, the value of the bonds would increase by up to 2000 per cent.

Since the time the Burlington Northern became the obligor on the bonds, it has undergone a corporate reorganization, in which its name was changed, and several mergers. When it reorganized to effectuate a name change and to create a holding company, the Burlington Northern undertook a Supplemental Indenture under its new name "to authorize the unbroken continuity" of the Railroad's obligations to the bondholders.

After a 1981 merger with the Colorado & Southern Railway, the Railroad undertook another Supplemental Indenture. The Supplemental Indenture subjected the former assets of Colorado & Southern to a lien that the Railroad's mortgage trustee had been required to maintain on certain blocks of stock in order to secure payment on the bonds. The Railroad wanted to free the stock from the lien so that it could cancel the stock. The Railroad issued several other Supplemental Indentures, for the same purpose, after other subsequent mergers. None of the Supplemental Indentures created new debt.

In 1985, the Railroad sought the mortgage trustee's release of its lienhold on 1.9 million acres of undeveloped property that had previously served as partial security for the bond debt. A class of gold bondholders filed an action, with Alan Reivman as class representa-

tive, to prevent the lienhold release. In 1987, the Railroad negotiated a settlement with the bondholders (the "Reivman Settlement"), paying the class $35.5 million in exchange for their agreement to drop the action and cease opposition to the release. The settlement did not purport to create new bond obligations.

The CSXT bonds at issue in *Adams v. CSX Transportation, Inc.* have a history similar to the Railroad bonds. In 1899, the Columbus, Hocking Valley & Toledo Railway Company issued $20 million in bonds containing gold clauses that governed payment of the interest and the principal. In 1930, Hocking Valley merged into the Chesapeake & Ohio Railway ("C & O"). In 1987, C & O and CSXT, both of which were wholly owned by the CSX Corporation, merged, leaving CSXT as the surviving entity. CSXT executed a Supplemental Indenture in satisfaction of the original Hocking Valley Mortgage Agreement's requirements, in which it agreed to "assume the due and punctual payment of the principal and interest of all the Bonds issued under [Hocking Valley's first mortgage] according to their tenor . . . ." Approximately $15.8 million of the original Hocking Valley Bonds remain outstanding.

In 1933, Congress passed a Joint Resolution ("the 1933 Statute") providing that any obligation containing a gold clause "shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts." Ch. 48, 48 Stat. 112, 113 (1933) (formerly codified at 21 U.S.C. § 463). The statute gave the obligor the option of paying its debts in any form of legal tender, including gold, and prevented any obligee from enforcing gold clauses in existing or future obligations. The Gold Reserve Act of 1934, however, foreclosed the obligor's

option of paying in gold by banning the use of gold as legal tender. *See* Gold Reserve Act of 1934, ch. 6, 48 Stat. 340 (1934) (repealed). From 1933 forward, the railroads made the interest payments on their bonds in currency.

In 1977, Congress amended the 1933 Statute by providing that it did "not apply to obligations issued on or after the date of enactment of this section." 91 Stat. 1227, 1229 (1977). The 1933 statute and its amendment were then recodified in 1982 as follows:

> An obligation issued containing a gold clause or governed by a gold clause is discharged on payment (dollar for dollar) in United States coin or currency that is legal tender at the time of payment. This paragraph does not apply to an obligation issued after October 27, 1977.

31 U.S.C. § 5118(d)(2). In 1985, Congress reauthorized the use of gold coin as legal tender when it provided for the minting of $50 "Gold Eagle" coins. *See* Gold Bullion Coin Act of 1985, Pub. L. No. 99-185, 99 Stat. 1177 (codified as amended at 31 U.S.C. § 5112 (1994)).

Adams filed these two class actions in the district court in 1993. In *Adams v. Burlington Northern Railroad*, No. 94-35461, Adams sought a declaration that the original terms of the bonds, requiring payment of annual interest and principal at maturity in gold coin of the time (1896 and 1921), are enforceable. Adams also sought damages accruing from the Railroad's failure to pay interest in gold coin from the time any new obligations issued, as determined by the court, to the present. The district court dismissed the action for failure to state a claim upon which relief could be granted, Fed. R. Civ. P. 12(b)(6), and found that the Railroad also had met its burden

for a grant of summary judgment under Fed. R. Civ. P. 56.

Adams brought his second class action, *Adams v. CSX Transportation, Inc.*, No. 94-35618, on behalf of all Hocking Valley gold bondholders. He sought a declaration that CSXT must make all future interest and principal payments in gold coin of the time (the year 1899) and damages for CSXT's failure to pay interest in gold from the time of the 1987 merger with C & O until the time of the judgment. The district court dismissed Adams' action for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

Adams appeals from the district court's dismissal of his claim and summary judgment against him in his action against the Burlington Northern, and from the district court's dismissal of his action against CSXT.

ANALYSIS

I. *Adams v. Burlington Northern Railroad*

A. Standard of Review

Adams contends that the district court's dismissal of his claim under Fed. R. Civ. P. 12(b)(6) was improper because the court considered material beyond the pleadings, and that the Railroad's motion should have been treated as a Rule 56 motion for summary judgment. We assume for purposes of decision that the district court entered summary judgment, and affirm on that basis. We review summary judgments de novo, viewing the evidence in the light most favorable to the non-moving party, to determine whether there are any genuine issues of material fact and whether the district court correctly

applied the relevant substantive law. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995), *cert. denied*, 1996 WL 115524 (1996).

B. The 1933 Statute and the 1977 Amendment.

Adams contends that the district court erred in determining that the 1933 Statute continues to render unenforceable gold clauses embodied in obligations issued before October 27, 1977. We reject that contention.

As now codified, the 1933 statute and its 1977 amendment are clear on their face.[1] Obligations payable in gold are discharged by payment in any United States legal tender, but that command does not apply to obligations issued after October 27, 1977.

The legislative history of the 1977 amendment supports this plain meaning. Senator Helms, sponsor of the bill amending the 1933 Statute, stated that the bill would "make enforceable, gold clause contracts entered into after the enactment of the bill. It is intended to stand neutral with regard to the enforceability of gold clause obligations issued in the past." 123 Cong. Rec. 633, 635 (1977). Senator Helms was aware of pending cases which were to decide the amendment's effect on pre-1933 gold bonds, and he stated his intent to allow courts to resolve that issue. *See id.* Almost immediately, one of the gold clauses in issue in this case was held unenforceable in *Feldman v. Great Northern Ry. Co.*, 428 F.Supp. 979 (S.D.N.Y. 1977). *Feldman* held that gold bonds issued prior to 1933 still could be paid "dollar for dollar, in

---

[1]The 1933 statute and the 1977 amendment were equally clear as separately enacted; the 1982 recodification was not intended to effect any substantive changes. *See* H.R. Rep. No. 651, 97th Cong., 2d Sess. 1-4 (1982), *reprinted in* 1982 U.S.C.C.A.N. 1895, 1895-98.

legal tender of the United States," and need not be paid in gold. *Id.* at 987.

According to Adams, the 1933 Act (at least when combined with the 1934 abolition of gold as legal tender) created an impossibility defense to the payment of gold to the bondholders. He argues that the 1977 Amendment and the 1985 Act authorizing the use of gold as legal tender removed this "impediment," reviving the Railroad's obligations. This interpretation conflicts with the plain meaning of the 1933 statute. That statute does not simply forbid payment in illegal tender, it affirmatively authorizes payment in any tender legal at the time of payment. Indeed, gold was legal tender in 1933 and did not become illegal until enactment of the Gold Reserve Act of 1934, 48 Stat. 337, 340 (1934). The 1985 statute removes the barrier of the 1934 Act, but it does nothing to impair the 1933 statute. The effect of the 1985 statute is to permit the Burlington Northern to make payment in gold coins if it wishes to, but its debts are discharged if it pays in any legal tender. Section 5118(d)(2) so states.

C. Adams' Claim that the Bonds Were Issued After October 27, 1977.

Adams argues, in the alternative, that for purposes of the 1977 amendment the Railroad bonds were "issued" after October 27, 1977. He contends that sale and transfer of the bonds, as well as certain business transactions and reorganizations, such as mergers and a change in the security for the bond debt, effected a new issuance of bonds after 1977. Adams' claim raises a question of statutory interpretation regarding the meaning of the term "issued" in the 1977 Amendment.

The 11th Circuit has held that a lease obligation is "issued" within the meaning of the 1977 amendment when the lease is "entered into." *Rudolph v. Steinhardt*, 721 F.2d 1324, 1330 (11th Cir. 1983); *see also* 123 Cong. Rec. 635 (1977). In the context of bonds, the term has a similar and even better-understood meaning. A bond obligation is "entered into," or "issued" when the bond first "comes into the hands of a holder, so executed and delivered as to bind the obligor." 6A Fletcher Cyc. Corp. § 2688 (1989). While the "date of issue . . . usually means the arbitrary date fixed as the beginning of the term for which [the bonds] run," "in the sense in which the term [issued] is ordinarily used a bond is not issued until it is delivered to some one who claims it as a debt against the corporation." *Id.* Under Article 3 of the Uniform Commercial Code, which covers negotiable instruments, "an issue means the *first delivery* of an instrument to a holder or remitter." *Id.* Article 3 of the Uniform Commercial Code applies by analogy to bonds. *Id.* We adopt this interpretation and hold that bonds are "issued" within the meaning of the 1977 amendment when they are delivered to the first holder.

The Alaska Supreme Court has interpreted the meaning of "issued" in the 1977 Amendment in accordance with this ordinary understanding of the term. *See Gold Bondholders, Etc. v. Atchison, Topeka & Santa Fe Ry. Company*, 649 P.2d 947 (Alaska 1982). *Gold Bondholders* was an action brought by persons who in 1980 had purchased railroad bonds with gold clauses. *Id.* at 948. The railroad had originally issued the bonds in 1895. *Id.* The bondholders argues that the bonds had not been "issued" to them until they were delivered to them in 1980, so that the 1933 Act and 1977 amendment did not prevent them from enforcing the gold clauses. *Id.* 1t

950. The Alaska Supreme Court held that the gold clauses were unenforceable under the 1933 Act, explaining that it "[knew] of no authority which would consider each purchase of the bond after its first purchase to be a new issue of the bond." *Id.*[2]

Taking a different tack from that of the plaintiffs in *Gold Bondholders,* Adams frames his argument in terms of novation, arguing that new obligations to pay in gold arose after October 27, 1977. He argues that because a novation may result from the agreed substitution of an obligee on indebtedness, novations and, consequently, new issuances, occurred each time gold bonds were purchased and sold. This argument misunderstands the requirements for a novation,[3] and is inapposite in the context of bond obligations. Adams' novation argument is essentially the same as the argument that the Alaska Supreme Court rejected, and that we also reject for the same reasons. The date of issue of bonds is the date when they are *first* issued, not when they are resold.

Adams argues that novations also occurred when the Railroad undertook a Supplemental Indenture after a corporate reorganization in which it changed its name, and when it undertook Supplemental Indentures after

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[2]The bonds at issue in *Gold Bondholders* contained terms stating that the bonds were transferable, and that any purchaser could surrender the bond and that "a new registered bond will be issued to the transferee in exchange therefor." *Id.* The Alaska Supreme Court nonetheless found that the 1933 Act was intended to vitiate such obligations "insofar as they required payment in gold specie," and was unpersuaded that the bonds were first issued to the bondholders in 1980. *Id.* at 950-51.

[3]Novations generally require that the parties intend to extinguish the old obligation and to create a new obligation. 66 C.J.S. *Novation,* § 11(b)(1). *See also MacPherson v. Franco,* 208 P.2d 641, 642 (Wash. 1949).

several other mergers, some of which involved the substitution of different collateral to secure the debt. In support of his argument, Adams points to cases in which novations rendered gold clauses in leases enforceable. *See, e.g., Wells Fargo bank v. Bank of America*, 38 Cal. Rptr.2d 521 (App. 1995); *Fay Corp. v. BAT Holdings I, Inc.*, 646 F.Supp. 946 (W.D. Wash. 1986), *aff'd sub nom. Fay Corp. v. Frederick & Nelson Seattle, Inc.*, 896 F.2d 1227 (9th Cir. 1990).

Our response to this argument is much the same as our response to the contention that the sale of a bond constitutes a novation and new "issue." The date of issue of a bond is the date of first issue; the fact that the obligor has continued to be bound, or has agreed to continue to be bound, despite reorganizations and mergers, does not alter the controlling first issue date. Whatever may be the rule regarding transfer of leases, bonds must continue to be viewed as issued on the date of first issue. *See Wells Fargo*, 38 Cal. Rptr.2d at 528 n.5 (stating that novation doctrine applicable to leases would not apply to bonds). For purposes of the 1977 amendment, determinations regarding the issuance date of a bond should "[focus] on the legal structure of the bonds and not novation." *Id.* (citing *Gold Bondholders*, 649 P.2d at 950).

If either the sale of bonds, or the merger of the obligor with an agreement to honor outstanding bonds, were to effectuate a new issue of the bonds, the prospective nature of the 1977 amendment would be almost entirely defeated in the major area of corporate bonds. It was the intent of the 1977 amendment to remain "neutral" concerning bonds issued prior to 1977, not to render virtually all of them payable in gold, which would be the effect were Adams' doctrine of novation applied to bond obligations. Moreover, the issuance of corporate bonds

is subject to a well-developed, specialized body of law, and the general law of novation is not easily injected into that context. Although sometimes described as a specific type of contract, bonds are financial instruments inherently different from leases, which were at issue in the cases that Adams cites. Bonds are regularly sold and purchased in large, impersonal markets, by corporations that frequently undergo corporate changes, while leaseholds generally involve a small number of readily ascertainable and stable parties who can engage in the type of bargaining and mutual consent necessary for a novation. *See* 66 C.J.S. *Novation* § 8(b) (1950) ("the same parties necessary for the making of the original contract are essential to the making of the contract of novation"); *see generally*, 66 C.J.S. *Novation* §§ 8-21 (1950). We are unable to accept the view that Congress intended to alter so radically the obligations of bonds that have been in public circulation for nearly a century, when the language and history of its amendment suggests a contrary purpose. We conclude that none of the theories of novation advanced by Adams are sufficient to cause us to recede from the view that the Railroad's bonds were "issued" on the date of first issue, in 1896 or 1921, as the case may be.[4] They consequently are subject to the 1933 statute and may be paid with any legal tender.

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[4]Even if novation analysis were appropriate, the circumstances surrounding the corporate transactions in this case would not meet the formal requirements for a novation. Under Washington law, which applies in this case, a novation requires the substitution of a new obligation for an old one, and not merely of a new paper or note. *Davis v. Gutheil*, 152 P. 14, 16 (Wash. 1915). All of these Supplemental Indentures expressly indicated a continuity of the original obligations to the bondholders, the old obligations were never extinguished, and no new obligor was substituted.

Adams also contends that the Reivman Settlement constituted a novation. Again, there was no new bond issuance because the Railroad did not undertake any new debt obligation.

D. Adams' Additional Claims

Adams also contends that the 1933 Statute was unconstitutional. This issue has been litigated repeatedly and resolved; Congress's abrogation of the gold clauses was constitutional. *See Norman v. B. & O. R.R. Co.*, 294 U.S. 240, 316 (1935) (finding that Congress acted within the scope of its Constitutional powers in enacting the 1933 Statute); *Guaranty Trust Co. v. Henwood*, 307 U.S. 247, 259 (1939) (holding that the 1933 Statute did not offend the Fifth Amendment); *Feldman v. Great N. R.R.*, 428 F.Supp. 979, 982, 984 (1977) (holding that the 1933 Statute still applied even after the emergency prompting it had abated).

Adams' argument regarding the Railroad's breach of an implied duty of good faith and fair dealing is misguided. The 1933 Act authorized the Railroad to discharge its bond obligations by payment of any legal tender; it did not create an "impediment" to payment which the Railroad had any good faith obligation to avoid. The Railroad was legally excused from meeting its original obligations under the gold clauses and remains so.

We have reviewed Adams' other arguments and find them to be without merit. We affirm the district court's judgment dismissing Adams' action against the Burlington Northern. Adams did not demonstrate that there are any disputed issues of material fact regarding whether the Railroad's bonds were first issued in 1896 and 1921, respectively. Nor did Adams demonstrate that additional discovery could lead to evidence raising a triable issue.

II. *Adams v. CSX Transportation, Inc.*

We review de novo the district court's Fed. R. Civ. P. 12(b)(6) dismissal of Adams' suit against CSXT. *Stone v. Travelers Corp.*, 58 F.3d 434, 436-37 (9th Cir. 1995).

Adams' claim against CSXT fails for the same reasons as his suit against the Railroad. There was only one issuance of Hocking Valley bonds, at the time of their sale in 1899. These original debt obligations continued, and were assumed in their entirety, by CSXT. The original Hocking Valley Indenture specified that in the event of a merger the successor corporation would assume the same obligation as the original obligor. No new debt was created, and the only relevant "obligation" for purposes of the 1977 Amendment was that which arose upon the issuance of the Hocking Valley bonds in 1899.

The 1933 Act bars the enforcement of the gold clauses in the CSXT bonds. We thus affirm the district court's dismissal of Adams' claim for failure to state a claim.

CONCLUSION

We affirm the district court's dismissal of Adams' claims in both *Adams v. Burlington Northern Railroad*, No. 94-35461, and *Adams v. CSX Transportation, Inc.*, No. 94-35618, because the gold bonds in both cases were "obligations issued" prior to October 27, 1977. Accordingly, the 1933 Act bars the bondholders from enforcing the gold clauses against the obligors.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NO. C93-1590WD

GUY AND BONNIE L. ADAMS, et al.,
Plaintiffs,

v.

BURLINGTON NORTHERN RAILROAD COMPANY, et al.,
Defendants.

ORDER OF DISMISSAL

For the reasons stated in open court at the conclusion of the hearing held on April 11, 1994, defendants' motion for dismissal under Fed. R. Civ. P. 12(b)(6) is granted; the alternative motion for summary judgment of dismissal under Fed. R. Civ. P. 56(b) is also granted; and this action is dismissed.

The clerk is directed to send copies of this order to all counsel of record.

Dated: April 11, 1994.

/s/
William L. Dwyer
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Case Number C93-1590WD

GUY AND BONNIE L. ADAMS, et al.,

Plaintiffs,

v.

BURLINGTON NORTHERN RAILROAD COMPANY, et al.,

Defendants.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Defendants' motion for dismissal under Fed. R. Civ. P. 12(b)(6) and alternative motion for summary judgment under Fed. R. Civ. P. 56(b) having been granted, judgment of dismissal is hereby entered.

Date: April 11, 1994

BRUCE RIFKIN
Clerk

Mary Duett
(By) Deputy Clerk

APPENDIX C

[Filed November 15, 1993]

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NO. C93-1590

GUY and BONNIE L. ADAMS; TIMOTHY ADAMS; CLIFTON ALBRIGHT; JANET ALLOTT; ATWOOD-HINZMAN INC. PROFIT SHARING PLAN; VIVIAN AUDETT; HERB and BETTY BAILEY; BARNTS MEDICAL SPECIALITIES; ANNE BOWERS; TOM BRADLEY; ROBERT BRANDT, JR.; DONALD BROOKHART; BRIAN CATHCART; FRANK CATHCART; CENTRAL LIFE ASSURANCE COMPANY; E. WILLIAM and MARLENE CHADDERTON; KENNETH CHUN; VIVIAN CHAN CHUN; KENNETH COLLARD; KAREN DAVIS; CLIFFORD DAVIDSON; CHARLOTTE DE METRY; WAYNE DEMEESTER; DAPHNE DEMETRY; DMN, INC.; DAVID DRIVER; MARVIN DZIABIS; RAY EIFORD; ELJIM COMPANY; ALBERT EVERETT; BRUCE FEARING; JOYCE FEARING; FIRST COLONY LIFE INSURANCE

COMPANY; RONALD FRAME; IGNACIA FUENTES; JANET GRATZER for Candace M. and Melanie A. Waiss; PETER and JANET E. GRATZER; FRANK GREEN; MAURICE HAGEN; BEN HANICH; FRANCIS HARTHORNE; SIEGFRIED HARTMANNS; LEE and ANNE HEINZINGER; M. HEINZINGER; WILLIAM R. and DELTA M. HELBIG, SR.; A. SHERMAN HILL; BRENT JAMES; BRYCE JAMES; CLIFFORD JAMES; LAUREL JAMES; GORDON JONES; RICHARD and MARNAE G. JONES; ALAN KAHN; ROBERT KEENHOLTS; CHARLES and CAROL KELTCH; MARVIN KLEIN; RALPH KLINGSHIRN; RICHARD KNUDSON; KERRIE ELIZABETH KNUTZEN TRUST, Gerald C. Knutzen, Trustee; KNUTZEN GRANDCHILDREN TRUST, Gerald C. Knutzen, Trustee; RAYMOND LOCK; MANHATTAN LIFE INSURANCE COMPANY; BERNARDA MANNING; ALBERT MILLER; MARY LOU MILLER; NAVY MUTUAL AID ASSOCIATION; JOHN NELSON; EUGENE ORRICO; MARK and SUSIE OVERBYE; JIM PARRIOTT; S. PERKINS; JOANN PETERSEN; RUSSEL and JANET PETERSON; JOSEPH PIGNATARO; NEIL PLUMLEY; ROBERT N.H. POOLE; RICHARD RALSTON; RICHARD RAU; RIBOB COMPANY; THEODORE ROBINSON, S & M SAKAMOTO PROFIT SHARING PLAN; WILLIAM SCROUP; SECURITY MUTUAL LIFE INSURANCE COMPANY; FRED and CELIA SEELIG; KEN SIMON; HAROLD STACK; ELLIS STANLEY; MICHAEL and DANNA K. STEWART; ROBERT and MERRILY STEWART; SUPER JOCK 'N JILL, INC.; DEAN and SHARON SUZUKI; JAMES and YURI SUZUKI; DMYTRO and ROMAYNE SZWAYKA, JR.; WILLIAM TAFT; JAMES and SANDRA THOMAS; ALBERT and MARY ANN TORRICO; TRUSTMARK LIFE INSURANCE COMPANY; IRENE WALTERS;

RICHARD WELSH; NANCY WIGGEN; LOIS WILLIAMS; HERMAN WOODCOCK; WOODMEN OF WORLD LIFE INSURANCE COMPANY; GLENN E. WRIGHT; JOHN ZYBURA,

On their own behalf and on behalf of and as Class Representatives of all other persons, similarly situated,

Plaintiffs,

v.

BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, and BURLINGTON NORTHERN, INC., a Delaware corporation,

Defendants.

COMPLAINT – CLASS ACTION
JURY TRIAL DEMANDED

Plaintiffs allege:

JURISDICTION

1. *Diversity Of Citizenship And Federal Question.* This Court has original jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1332 by reason of a federal question arising under United States statutes and diversity of citizenship between parties. The amount in controversy exceeds $50,000.

2. *Supplemental Jurisdiction.* Because the Court possesses original jurisdiction over plaintiffs' claims, the Court also has supplemental jurisdiction over plaintiffs'

state law claims pursuant to 28 U.S.C. § 1367. Plaintiffs' state law claims and federal question claims are so related as to form part of the same case or controversy.

VENUE

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(c) because defendants Burlington Northern Railroad Company and Burlington Northern, Inc. maintain offices in Seattle, Washington, are licensed to do business in the state of Washington, and are conducting business in the western district of the state of Washington.

PARTIES

4. *Plaintiffs.* Plaintiffs are holders of one or more of the following series of bonds issued by Northern Pacific Railway Company ("Northern Pacific") in 1896 or the Great Northern Railway Company ("Great Northern") in 1921:

(a) Northern Pacific 100-year Railway and Land Grant Gold Bonds, with a maturity date of January 1, 1997 and paying quarterly interest at four percent annually;

(b) Northern Pacific 150-year General Lien Railway and Land Grant Gold Bonds, with a maturity date of January 1, 2047 and paying quarterly interest at three percent annually;

(c) Great Northern General Mortgage Series O. Gold Bonds, with a maturity date of January 1, 2000, and paying semi-annual interest at 3.125 percent annually; and

(d) Great Northern General Mortgage Series Q, Gold Bonds, with a maturity date of January 1, 2010, and paying semi-annual interest at 2.625 percent annually.

(These bonds are collectively referred to in this Complaint as the "Gold Bonds".) Attached and incorporated in this Complaint as Exhibit A is a listing of the plaintiffs' names, residences or office locations, and principal amounts of their holdings of the Gold Bonds.

5. *Defendants.* Burlington Northern Railroad Company and Burlington Northern, Inc., are Delaware corporations with their principal place of business in Ft. Worth, Texas. (Burlington Northern Railroad Company and Burlington Northern, Inc., are referred to collectively in this Complaint as "Burlington Northern".) Burlington Northern is licensed to do business in the state of Washington and is doing business within the state of Washington. Burlington Northern is the successor in interest to Northern Pacific and Great Northern and is the current obligor under the Gold Bonds.

CLASS ACTION ALLEGATIONS

6. Plaintiffs bring all claims in this action individually and as class claims pursuant to Rule 23 of the Federal Rules of Civil Procedure. The requirement of subparts 23(a) and 23(b)(1), (b)(2) or (b)(3) are met.

7. Plaintiffs bring this action on behalf of all persons or entities (or their successors in interest) that are holders of Gold Bonds, excluding those bonds held by Burlington Northern in its treasury.

8. The class representatives believe the class consists of hundreds of geographically dispersed bondholders. The members of the class are so numerous that joinder of all members is impractical. The exact number and identity of class members can be determined by appropriate discovery.

9. There are questions of law or fact common to the class, including at least the following:

a. Are defendants obligated to pay principal and interest in gold as a result of the legislative enactments reviving gold clauses in contracts?

b. Did defendants explicitly or implicitly undertake new obligations under the Gold Bonds as a result of their mergers or consolidations?

c. Did defendants explicitly or implicitly undertake new obligations under the Gold Bonds as a result of plaintiffs' purchase, and defendants' sale, of the Gold Bonds?

d. Did defendants undertake new obligations under the Gold Bonds as a result of the settlement in *Rievman v. Burlington Northern Railroad Co.*?

e. To the extent the Gold Clause Resolution (31 U.S.C. § 463) retains any viability, is it presently constitutional as applied to plaintiffs' Gold Bonds?

f. Have defendants breached contractual obligations to make payment to plaintiffs of principal and interest in gold?

g. Have defendants breached implied covenants of good faith and fair dealing by failing to make payments to plaintiffs of principal and interest in gold?

h. Have defendants been unjustly enriched by failing to make payments to plaintiffs of principal and interest in gold?

10. Plaintiffs have the same interests in this matter as all other members of the class, and their claims are typical of all members of the class.

11. Plaintiffs are committed to pursuing this action and have retained competent counsel experienced in class actions and complex litigation. Plaintiffs will fairly and adequately represent the interests of the class members.

12. The prosecution of separate actions by members of the class will create a risk of establishing incompatible standards of conduct for the defendants. Individual actions may, as a practical matter, be dispositive of the interests of the class.

13. Defendants' actions are generally applicable to the class as a whole, and plaintiffs seek, among other things, equitable remedies with respect to the class as a whole.

14. The common questions of law and fact set forth above predominate over questions affecting only individual members of the class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation. In addition, if individual actions are prosecuted, they will impose a considerable burden on the courts. To plaintiffs' knowledge, no similar litigation is currently pending by other members of the class. Plaintiffs' counsel foresee little difficulty in the management of this case as a class action.

NATURE OF ACTION

15. *Enforcement Of Gold Clauses.* In summary, in this lawsuit, plaintiffs seek enforcement of the Gold Bonds according to their terms. Specifically, plaintiffs seek enforcement of the "gold clauses" contained in the Gold Bonds; *i.e.*, the obligor's promise to pay principal and interest in gold coin (or its equivalent) of the United States of America of the standard weight and fineness on November 10, 1896, as to the Northern Pacific Bonds, and on July 1, 1921, as to the Great Northern Bonds. In 1933, the obligor's promise to pay under the gold clauses was impeded by enactment of a Congressional resolution.

However, as a result of further events and Congressional actions, any and all impediments to the obligor's promise to pay under the gold clauses have now been removed. Despite the removal of these impediments, the obligor—Burlington Northern—has refused and affirmatively avoided its obligation to pay in gold.

16. *Issuance Of Gold Bonds.* In 1896-1897, Northern Pacific issued Prior Lien Mortgage Bonds (with four percent interest on the principal) and General Lien Mortgage Bonds (with three percent interest on the principal) (in the aggregate principal amount of approximately $186 million) to finance the construction of railroad and telegraph lines throughout the Midwest and Northwest. Ninety-two million dollars of the Northern Pacific bonds remain outstanding. In 1921 Great Northern issued General Mortgage Gold Bonds: Series O (with 3.125 percent interest on the principal) and Q (with 2.625 percent interest on the principal) (in the aggregate principal amount of approximately $70 million) to finance the construction of railroad lines and retire debt. Sixty-two million dollars of the Great Northern Bonds remain outstanding. A copy of a representative Prior Lien Mortgage Bond is attached and incorporated in this Complaint as Exhibit B. A copy of a representative General Lien Mortgage Bond is attached and incorporated in this Complaint as Exhibit C. Copies of representative Series O and Series Q Bonds are attached and incorporated in this Complaint as Exhibits D and E.

17. *Value Of Plaintiffs' Holdings.* The Gold Bonds yield interest to maturity at their individual described interest rate. In addition, plaintiffs hold Gold Bonds in the principal amount of $12,095,000.00, consisting of:

a. 4 Percent Northern Pacific Prior Lien Mortgage Bonds in the principal amount of $1,473,000.00;

b. 3 Percent Northern Pacific General Lien Mortgage Bonds in the principal amount of $4,710,000.00;
c. 3.125 Percent Great Northern Series O Bonds in the principal amount of $1,608,000.00; and
d. 2.625 Percent Great Northern Series Q Bonds in the principal amount of $4,304,000.00.

The present market value of gold coins of the weight and fineness required as payment under the terms of the Gold Bonds is approximately $18.00 in United States currency for each dollar obligation under the Gold Bonds. Accordingly, plaintiffs' aggregate holdings are presently worth in excess of $217,710,000.00. The aggregate holdings of all the class members substantially exceed $217,000,000.00.

FACTS

18. *The Gold Clauses.* Under the terms of the Gold Bonds, the obligor of the Northern Pacific Bonds promised to pay principal and interest when due, upon the maturity date, in "gold coin of the United States of America of the present [November 10, 1896] standard of weight and fineness" and quarterly interest, when due, "in like gold coin." The obligor of the Great Northern Bonds likewise promised to pay the bonds ". . . in gold coin of the United States of America of or equal to the standard of weight and fineness as it existed on the first day of July, 1921 . . ." These "indexed" contracts were designed to protect the bondholders against inflation.

19. *Gold Prohibition.* In 1933, soon after the United States had been taken off the gold standard, Congress passed a joint resolution (the Gold Clause Resolution, 31 U.S.C. § 463) which declared gold clauses "against public policy" and provided that any obligation containing a gold clause:

> shall be discharged upon payment, dollar for dollar, in any coin or curren y which at the time of payment is legal tender for public and private debts.

Since gold was no longer "legal tender," gold clauses were payable only dollar for dollar in United States coin or currency. In 1934, Congress enacted the Gold Reserve Act, which banned private ownership and use of gold. This ban remained in effect for nearly forty years.

20. *Revival Of Gold Clauses.* In 1973 and 1974, Congress passed the Gold Ownership Amendments, which repealed the forty-year prohibition on private ownership of gold. In 1977, Congress re-authorized the use of gold clauses for obligations issued after October 27, 1977. The pertinent statute (31 U.S.C. § 5118(d)(2)) provides:

> An obligation issued containing a gold clause or governed by a gold clause is discharged on payment (dollar for dollar) in United States coin or currency that is legal tender at the time of payment. This paragraph does not apply to an obligation issued after October 27, 1977.

Finally, in 1985, Congress enacted a statute (31 U.S.C. § 5112(h)) which provides that—for the first time since 1933—U.S. gold coins are "legal tender."

21. *Burlington Northern's Assumption Of Gold Bond Obligations.* In 1970, Northern Pacific, Great Northern and two other railroad companies merged into Burlington Northern. Following the mergers, Burlington Northern became the new obligor under the Gold Bonds.

22. *Revival Of Gold Clause Obligations.* After passage of the various enactments reviving gold clauses, there were no impediments to Burlington Northern's obligation to pay in gold, or its equivalent, under the Gold Bonds. Thus, the gold clause obligations were retroactively

revived or, in the alternative, were revived prospectively. These Gold Bonds are publicly traded and contain on their face when traded the gold clause obligations. Upon each trade, the gold clause obligation is satisfied by Burlington Northern and is transferred and communicated to each new purchaser of the Gold Bonds. However, Burlington Northern refuses to pay its gold bond obligations in gold or in its equivalent value. In addition, in the period after October 27, 1977, certain other events revived Burlington Northern's obligations under the gold clauses, pursuant to 31 U.S.C. § 5118(d)(2); for example:

(a) *Post-October 27, 1977 Mergers.* Since October 27, 1977, Burlington Northern has entered into at least three mergers or consolidations, as part of which Burlington Northern explicitly or implicitly undertook new obligations under the Gold Bonds. These new obligations were substituted contracts and/or novations.

(b) *The Rievman Settlement.* In 1986, Burlington Northern settled a class action lawsuit, entitled *Rievman v. Burlington Northern Railroad Co.*, as part of which Burlington Northern explicitly or implicitly undertook new obligations under the Gold Bonds. The new obligations were substituted contracts and/or novations.

23. *Unconstitutionality Of Gold Prohibition.* To the extent it retains any viability, the Gold Clause Resolution (31 U.S.C. § 463) lacks a rational basis and is unconstitutional. This is because (by way of example and in the alternative to other allegations in this Complaint):

(a) Gold no longer plays a part in our federal monetary system;

(b) In the alternative, gold is a commodity and Congress is not entitled to regulate its value or use; or

(c) The Gold Clause Resolution is an unreasonable infringement on the rights of private citizens, including

the right to protect themselves from inflation through gold index contracts.

24. *Demand On Burlington Northern.* One or more holders of the Gold Bonds has demanded that Burlington Northern make payment of principal and interest on the Gold Bonds in gold. Burlington Northern has refused these demands.

25. *Demand On Trustees.* The trustees under the Gold Bonds are aware of the general substance of the allegations of the preceding paragraphs, since it is of public knowledge. One or more holders of the Gold Bonds has made, or will make, demand upon the trustees under the Gold Bonds to vigorously enforce the rights of the bondholders under the terms of the Gold Bonds. In addition, and arguably in compliance with the terms of the applicable bond indentures, simultaneous with filing this Complaint, plaintiffs' mailed written notice to the trustees of Burlington Northern's default, requested the trustees to prosecute the bondholders' claims, and offered the trustees adequate security against the costs of bringing the bondholders' claims by offering to pursue this class action lawsuit. In light of the trustees' prior knowledge of the revival and validity of the gold clauses and continued failure to take action in the past, further requests to the trustees will be futile.

COUNT I
(DECLARATORY JUDGMENT)

26. *Incorporation.* Plaintiffs restate and incorporate the preceding paragraphs as if fully set forth herein.

27. *Declaratory Judgment.* Plaintiffs request a declaratory judgment under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57 that the Gold Bonds, including the gold clauses,

are enforceable and require payment of principal and interest in gold or its equivalent. There exists an actual controversy between the parties on this issue.

28. *Basis For Declaratory Judgment.* The Gold Bonds are enforceable pursuant to their terms. In addition, Burlington Northern has traded in the Gold Bonds and has undertaken new obligations under the Gold Bonds by reason of the trades and the post-October 27, 1977 mergers and consolidations and the *Rievman* settlement. Plaintiffs' request for declaratory judgment is further supported and based upon constitutional provisions and theories, including, but not limited to, implied repeal, coexistence, basic fairness and equity.

COUNT II
(BREACH OF CONTRACT)

29. *Incorporation.* Plaintiffs restate and incorporate the preceding paragraphs as if fully set forth herein.

30. *Contract.* The Gold Bonds constitute an enforceable contract between Burlington Northern and the holders of the Gold Bonds. In 1933, as a result of Congressional resolution, Burlington Northern's obligation to make payments in gold was impeded. Any and all impediments to Burlington Northern's performance of its obligations have now been removed. In addition, Burlington Northern has traded in the Gold Bonds and has undertaken new obligations under the Gold Bonds by reason of the post-October 27, 1977 mergers and consolidations, defendants' sale and plaintiffs' purchase of the Gold Bonds, and the *Rievman* settlement.

31. *Breach.* By continuing its refusal to pay interest and principal in gold, or its equivalent, Burlington Northern has breached its obligations under the Gold Bonds.

32. *Damages.* Plaintiffs have been damaged and continue to be damaged by Burlington Northern's actions.

COUNT III
(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)

33. *Incorporation.* Plaintiffs restate and incorporate the preceding paragraphs as if fully set forth herein.

34. *Duty Of Good Faith.* Burlington Northern has the duty, implied in every contract, to deal with the holders of the Gold Bonds fairly and in good faith. By failing to resume payments in gold, or its equivalent, after all impediments of doing so had been removed, Burlington Northern breached its duty of good faith and fair dealing. In the alternative, by taking affirmative steps (in the post-October 27, 1977 mergers and consolidations and by the creation of Burlington Resources, Inc. and in the spin-off of Northern Pacific assets after the *Rievman* settlement) to avoid reviving its obligations under the gold clauses, Burlington Northern breached its duty of good faith and fair dealing.

35. *Damages.* Plaintiffs have been damaged and continue to be damaged by Burlington Northern's actions.

COUNT IV
(UNJUST ENRICHMENT)

36. *Incorporation.* Plaintiffs restate and incorporate the preceding paragraphs as if fully set forth herein.

37. *Benefit Wrongfully Retained.* Burlington Northern benefitted for years as a result of the gold prohibition. After the impediments to payment in gold had been removed, the holders of the Gold Bonds were entitled to receive payment on the Gold Bonds in gold or its equiva-

lent; however, Burlington Northern has wrongfully retained the money and benefits due to the holders of the Gold Bonds. For example, money otherwise due the bondholders was paid to Burlington Northern officers, directors and shareholders; property otherwise held as security for bondholders was distributed to shareholders of Burlington Northern, Inc., by a spin-off of Burlington Resources, Inc.

38. *Damages.* Plaintiffs have been damaged and continue to be damaged by Burlington Northern's actions.

JURY TRIAL DEMAND

39. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiffs demand a trial by jury.

RELIEF REQUESTED

Plaintiffs request the following relief:

(a) for a judicial declaration that the Gold Bonds are enforceable pursuant to their terms, including payment of interest and principal in gold;

(b) for damages in an amount to be proven at trial;

(c) for pre-judgment and post-judgment interest, costs and attorney fees as allowed by law; and

(d) for such further relief as the Court deems just and equitable.

DATED this 15th day of November, 1993.

FOSTER PEPPER & SHEFELMAN

/s/ Camden M. Hall
Camden M. Hall, WSBA No. 146
Robert A. Medved, WSBA No. 7016
Patrick J. Callans, WSBA No. 19361

Attorneys for Plaintiffs

EXHIBIT A

Guy Adams Bonnie L. Adams	Olympia, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 205,000.00
Timothy Adams	Olympia, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 110,000.00
Clifton Albright	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 10,000.00
Janet Allott	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 30,000.00
Atwood-Hinzman Inc. Profit Sharing Plan	Spokane, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 50,000.00
Vivian Audett	Redmond, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 110,000.00
Herb & Betty Bailey	Centralia, WA	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 40,000.00
Herb & Betty Bailey	Centralia, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 100,000.00

Barnts Medical Specialties Attn: Joyce Barnts	Redmond, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 50,000.00
Anne Bowers	Red Bank, NJ	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 2,000.00
Tom Bradley	Arlington, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 106,000.00
Robert Brandt, Jr.	Valleyford, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 50,000.00
Donald Brookhart	Monroe, WA	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 10,000.00
Donald Brookhart	Monroe, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 110,000.00
Brian Cathcart	Bothell, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 49,000.00
Frank J. Cathcart	Bellevue, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 7,000.00
Central Life Assurance Co Attn: W. K. Gunzenhauser	Des Moines, IA	Great Northern Ry General Mortgage Series Q, 2.625%	$ 50,000.00

Central Life Assurance Co Attn: W. K. Gunzenhauser	Des Moines, IA	Great Northern Ry General Mortgage Series O, 3.125%	$ 425,000.00
E. William Chadderton Marlene Chadderton	Naalehe, HI	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 14,000.00
E. William Chadderton Marlene Chadderton	Naalehe, HI	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
Kenneth Chun	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
Vivian Chan Chun	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
Kenneth Collard	Vancouver, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 30,000.00
Clifford Davidson	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 37,000.00
Karen Davis	Maple Valley, WA	NorthernPacific Ry General Lien & Land Grant 3%	$ 80,000.00
Charlotte De Metry	Oroville, CA	Northern Pacific Ry General Lien & Land Grant 3%	$ 100,000.00

Wayne Demeester	Redmond, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 15,000.00
Daphne Demetry	San Diego, CA	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
DMN, Inc. Donald Newton	Redmond, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 59,000.00
David Driver	Seattle, WA	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 10,000.00
Marvin Dziabis	N. Manchester, IN	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
Ray Eiford	Bellingham, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 140,000.00
ELJIM Company Mr. Robert Elmen	Sioux Falls, SD	Northern Pacific Ry General Lien & Land Grant 3%	$ 250,000.00
Albert Everett	Woodinville, WA	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 10,000.00
Bruce Fearing	Kent, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00

Joyce Fearing	Kent, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
First Colony Life Insurance Company Attn: J. Alden Butler	Lynchburg, VA	Great Northern Ry General Mortgage Series Q, 2.625%	$2,155,000.00
Ronald Frame	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 45,000.00
Ignacia Fuentes	Truchas, NM	Northern Pacific Ry General Lien & Land Grant 3%	$ 30,000.00
Janet Gratzer Candace M. & Melanie A. Waiss	Puyallup, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 10,000.00
Peter Gratzer Janet E. Gratzer	Puyallup, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 10,000.00
Frank Green	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 30,000.00
Maurice Hagen	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 17,000.00

Ben Hanich	Edmonds, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 30,000.00
Francis Harthorne	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 50,000.00
Siegfried Hartmanns	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 10,000.00
Lee & Anne Heinzinger	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 147,000.00
M. Heinzinger	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 60,000.00
William R. Helbig, Sr. Delta M. Helbig, TIC	Honolulu, HI	Northern Pacific Ry General Lien & Land Grant 3%	$ 100,000.00
A. Sherman Hill	Yakima, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 80,000.00
Brent James	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 10,000.00
Bryce James	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 81,000.00

Clifford James	Merced, CA	Northern Pacific Ry General Lien & Land Grant 3%	$ 40,000.00
Laurel James	Seattle, WA	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 7,000.00
Laurel James	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 40,000.00
Gordon Jones	Bellingham, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 90,000.00
Richard Jones Marnae G. Jones	Bothell, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
Alan Kahn	Forest Hills, NY	Northern Pacific Ry General Lien & Land Grant 3%	$ 100,000.00
Robert Keenholts	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 40,000.00
Robert Keenholts	Seattle, WA	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 10,000.00
Charles Keltch Carol Keltch	Pasco, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 40,000.00

Marvin Klein	Mountain View, CA	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 10,000.00
Ralph Klingshirn	Bothell, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
Richard Knudson	Tacoma, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
Knutzen Grandchildren Trust Gerald C. Knutzen, Trustee	Federal Way, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 135,000.00
Kerrie Elizabeth Knutzen Trust Gerald C. Knutzen, Trustee	Federal Way, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 15,000.00
Raymond Lock	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
Manhattan Life Ins. Co. Attn: James J. Breen	Cincinnati, OH	Great Northern Ry General Mortgage Series Q, 2.625%	$ 335,000.00
Manhattan Life Ins. Co. Attn: James J. Breen	Cincinnati, OH	Great Northern Ry General Mortgage Series O, 3.125%	$ 553,000.00
Manhattan Life Ins. Co. Attn: James J. Breen	Cincinnati, OH	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 750,000.00

Bernarda Manning	Tacoma, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 60,000.00
Albert Miller	Redmond, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 90,000.00
Mary Lou Miller	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 50,000.00
Navy Mutual Aid Assn. Attn: A. C. Drewry	Washington, DC	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 200,000.00
John Nelson	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 30,000.00
Eugene Orrico c/o Brian J. Orrico	Kirkland, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 35,000.00
Mark & Susie Overbye	Knoxville, TN	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 20,000.00
Mark & Susie Overbye	Knoxville, TN	Northern Pacific Ry General Lien & Land Grant 3%	$ 30,000.00
Jim Parriott	Jackson Hole, WY	Northern Pacific Ry General Lien & Land Grant 3%	$ 10,000.00

S. Perkins	Mill Creek, WA	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 40,000.00
JoAnn Petersen	Edmonds, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 40,000.00
Russel & Janet Peterson	Corvallis, OR	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
Joseph Pignataro	Edmonds, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 40,000.00
Neil Plumley	Salem, OR	Northern Pacific Ry General Lien & Land Grant 3%	$ 30,000.00
Robert N. H. Poole	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
Richard Ralston	Portland, OR	Northern Pacific Ry General Lien & Land Grant 3%	$ 30,000.00
Richard Rau	Melrose, FL	Northern Pacific Ry General Lien & Land Grant 3%	$ 10,000.00
RIBOB Company Mr. Robert Elmen	Sioux Falls, SD	Northern Pacific Ry General Lien & Land Grant 3%	$ 250,000.00

Theodore Robinson	Maryville, MO	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 10,000.00
S & M Sakamoto Prof Shar Plan Gerard Sakamoto, Trustee	Pearl City, HI	Northern Pacific Ry General Lien & Land Grant 3%	$ 100,000.00
William Scroup	Sedro Wooley, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 30,000.00
Security Mutual Life Insurance Company Attn: William W. Atkin	Binghampton, NY	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 300,000.00
Fred & Celia Seelig	Reno, NV	Northern Pacific Ry General Lien & Land Grant 3%	$ 65,000.00
Ken Simon	Renton, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 50,000.00
Harold Stack Pacific Investment Co.	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 100,000.00
Ellis Stanley	Kirkland, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 30,000.00

Michael Stewart Danna K. Stewart	Renton, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
Robert Stewart Merrily Stewart	Aberdeen, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 30,000.00
Super Jock n Jill, Inc. Laurel James, President	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 30,000.00
Dean & Sharon Suzuki	San Leandro, CA	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
James & Yuri Suzuki	Woodinville, WA	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 25,000.00
James & Yuri Suzuki	Woodinville, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 120,000.00
Dmytro Szwayka, Jr. Romayne Szwayka	Lyndhurst, NJ	Northern Pacific Ry General Lien & Land Grant 3%	$ 20,000.00
Dmytro Szwayka, Jr. Romayne Szwayka	Lyndhurst, NJ	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 5,000.00
William Taft	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 10,000.00

James & Sandra Thomas	Edmonds, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 18,000.00
Albert Torrico Mary Ann Torrico	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 10,000.00
Trustmark Life Ins. Co. Attn: General Counsel	Lake Forest, IL	Great Northern Ry General Mortgage Series Q, 2.625%	$1,264,000.00
Irene Walters	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 50,000.00
Richard Welsh	Issaquah, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 5,000.00
Richard Welsh	Issaquah, WA	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 5,000.00
Nancy Wiggen	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 45,000.00
Lois Williams	Olympia, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 24,000.00
Herman Woodcock	Creve Coeur, MO	Northern Pacific Ry Prior Lien & Land Grant 4%	$ 5,000.00

Woodmen of World Life Ins. Co.	Omaha, NE	Great Northern Ry General Mortgage Series O, 3.125%	$ 630,000.00
Woodmen of World Life Ins. Co.	Omaha, NE	Great Northern Ry General Mortgage Series Q, 2.625%	$ 500,000.00
Glenn E. Wright	Yellow Springs, OH	Northern Pacific Ry General Lien & Land Grant 3%	$ 10,000.00
John Zybura	Seattle, WA	Northern Pacific Ry General Lien & Land Grant 3%	$ 50,000.00

[BOND EXEMPLARS OMITTED]

APPENDIX D

LYNN M. VOSKUIL,
BURLINGTON NORTHERN INC.,
IN
5 INTERNATIONAL DIRECTORY OF
COMPANY HISTORIES 428
(ADELE HAST, ed., ST. JAMES PRESS 1992)

* * *

In the 1960s CB&Q, the Great Northern, and the Northern Pacific proposed to merge into one corporate entity. Murphy resigned in 1965, before the ICC could rule on the proposal. L. W. Menk succeeded him as president and chairman. In 1966 Menk resigned to become president of Northern Pacific and was succeeded by William J. Quinn.

In 1968 the ICC approved the merger plan under the name Burlington Northern Inc. In March 1970 the three firms and two smaller railroads formally consolidated, and Menk became president and chief operating officer of the new company. Burlington Northern in 1970 sought to acquire the Missouri-Kansas-Texas (Katy) Railroad but subsequently dropped its bid without comment. Industry observers speculated that the Katy's debt load may have discouraged Burlington Northern or that the ICC would have been unlikely to approve the merger.

In the early 1970s Burlington Northern diversified into natural resources management, focusing especially on

coal development. It also added an air freight subsidiary. Management structure changed in the 1970s; Menk became chairman and chief executive officer, with Robert Downing, Norman M. Lorentzsen, and Richard Bressler, serially, filling the dual posts of president and chief operating officer.

In 1972 Burlington Northern and Union Pacific sought joint control of Peninsula Terminal Co., a switching line in Portland, Oregon, but the U.S. Supreme Court reversed the ICC's approval of the plan. The following year brought merger negotiations between Burlington Northern and Chicago, Milwaukee, St. Paul & Pacific Railroad. The ICC rejected this merger plan. In 1980, however, Burlington Northern succeeded in acquiring the St. Louis-San Francisco Railway.

By 1978 the company had record profits, still largely from the railroad division. In 1982 Bressler became chairman, president, and chief operating officer. He streamlined existing operations by selling the air freight unit and unsuccessful segments of the railroad, and by continuing efforts to develop the company's coal, timber, and gas reserves. In 1983 Burlington Northern acquired El Paso Natural Gas Company, a diversified energy concern that specialized in producing natural gas, and in 1985 bought Southland Royal Company, producer of oil and gas. Initially these moves profitably supplemented Burlington's development of resources on its own railroad land. In June 1988, however, the company suddenly reversed its diversification trend and announced the spinoff of the energy resources operation as Burlington Resources Inc., an independent public company. The spinoff enabled Burlington Northern to avoid pending legal claims that remained against the former El Paso Natural Gas Company, which had been sued for breach

of contract, and to recover from falling energy prices. Burlington Motor Carriers Inc., in 1988. The buyer was an investor group that included the subsidiary's top management.

Bressler continued as chairman of Burlington Northern and Burlington Resources, while Gerald Grinstein, who had been vice chairman of both companies, became Burlington Northern's president and chief executive officer in 1989. Bressler retired in 1990, and Grinstein assumed the additional post of chairman. In the early 1990s Burlington Northern was focused on its railroad business, the company's historic strength. It was seeking increased flexibility in its labor contracts in an effort to improve efficiency and was investing in track improvements and new rolling stock.

Principal Subsidiary: Burlington Northern Railroad Co.

APPENDIX E

STATUTES, RULES, CONSTITUTIONAL PROVISION, CONGRESSIONAL PROCEEDINGS

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48 Stat. 112 (1933) (codified at 31 U.S.C. §463)

JOINT RESOLUTION

To assure uniform value to the coins and currencies of the United States.

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of

the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

SEC. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the stand-

ard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight."

Approved, June 5, 1933, 4.40 p.m.

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31 U.S.C. §442, 443

§442. Regulations for the acquisition and use of gold; exemption of gold held beyond continental United States.

The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and (c) for such other purposes as in his judgment are not inconsistent with the purposes of section 315b, 405b, 408a, 408b, 440 to 446, 733, 734, 752, 753, 754a, 754b, 767, 771, 821, 822a, 822b, and 824 of this title and sections 213, 411 to 415, 417, and 467 of Title 12. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such

regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in places beyond the limits of the continental United States. (Jan. 30, 1934, ch. 6, §3, 48 Stat. 340; Proc. No. 2695, 11 F. R. 7517, 60 Stat. 1352.)

REPEALS

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

CODIFICATION

Words "the Philippine Islands or other" preceding "places beyond" have been omitted on the authority of the Proc. No. 2695, eff. July 4, 1946, which granted independence to the Philippine Islands. 1946 Proc. No. 2695 is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse.

APPROVAL OF THE PRESIDENT

Power of the Secretary of the Treasury to perform, without the approval, ratification, or other action of the President, the functions vested in him by this section, see Ex. Ord. No. 10289, September 17, 1951, 16 F. R. 9499, set out as a note under section 301 of Title 3, The President.

§443. Acquisition and use of gold in violation of law; penalties.

Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in

custody, in violation of sections 315b, 405b, 408a, 408b, 440 to 446, 733, 734, 752, 753, 754a, 754b, 767, 771, 821, 822a, 822b, and 824 of this title and sections 213, 411 to 415, 417, and 467 of Title 12 or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of said sections or of any such regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred. (Jan. 30, 1934, ch. 6, § 4, 48 Stat. 340.)

REPEALS

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

Pub. L. No. 93-110, 87 Stat. 352, tit. I (1973)

AN ACT

To amend the Par Value Modification Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 2 of the Par Value Modification Act is amended by striking out the words "one thirty-eighth of a fine troy ounce of gold" and inserting in lieu thereof the following: "0.828948 Special Drawing Right or, the equivalent in terms of gold, of forty-two and two-ninths dollars per fine troy ounce of gold".

SEC. 2. The Par Value Modification Act is amended by adding at the end thereof the following new section:

"SEC. 5. It is the sense of the Congress that the President shall take all appropriate action to expedite realization of the international monetary reform noted at the Smithsonian on December 18, 1971."

SEC. 3. (a) Sections 3 and 4 of the Gold Reserve Act of 1934 (31 U.S.C. 442 and 443) are repealed.

(b) No provision of any law in effect on the date of enactment of this Act, and no rule, regulation, or order under authority of any such law, may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold.

(c) The provisions of this section, pertaining to gold, shall take effect when the President finds and reports to the Congress that international monetary reform shall have proceeded to the point where elimination of regulations on private ownership of gold will not adversely affect the United States' international monetary position.

Pub. L. No. 93-373, 88 Stat. 445 (1974)

AN ACT

To provide for increased participation by the United States in the International Development Association and to permit United States citizens to purchase, hold, sell, or otherwise deal with gold in the United States or abroad.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the International Development Association Act (22 U.S.C. 284 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 14. (a) The United States Governor is hereby authorized to agree on behalf of the United States to pay to the Association four annual installments of $375,000,000 each as the United States contribution to the Fourth Replenishment of the Resources of the Association.

"(b) In order to pay for the United States contribution, there is hereby authorized to be appropriated without fiscal year limitation four annual installments of $375,000,000 each for payment by the Secretary of the Treasury.".

SEC. 2. Subsections 3 (b) and (c) of Public Law 93-110 (87 Stat. 352) are repealed and in lieu thereof add the following:

"(b) No provision of any law in effect on the date of enactment of this Act, and no rule, regulation, or order in effect on the date subsections (a) and (b) become effective may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold in the United States or abroad.

"(c) The provisions of subsections (a) and (b) of this section shall take effect either on December 31, 1974, or at any time prior to such date that the President finds and reports to Congress that international monetary reform shall have proceeded to the point where elimination of regulations on private ownership of gold will not adversely affect the United States' international monetary position.".

SEC. 3. The International Development Association Act (22 U.S.C. 284 et seq.) is amended by inserting at the end thereof the following:

"SEC. 15. The United States Governor is authorized and directed to vote against any loan or other utilization of the funds of the Association for the benefit of any country which develops any nuclear explosive device, unless the country is or becomes a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons (21 UST 483)."

Approved August 14, 1974.

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31 U.S.C. §463

§463. Provision for payment of obligations in gold prohibited; uniformity in value of coins and currencies

(a) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained

in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this section, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.
(June 5, 1933, ch. 48, § 1, 48 Stat. 113.)

Pub. L. No. 95-147, 91 Stat. 1227 (1977)

An Act

To authorize the Secretary of the Treasury to invest public moneys, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized, for cash management purposes, to invest any portion of

the Treasury's operating cash for periods of up to ninety days in (1) obligations of depositaries maintaining Treasury tax and loan accounts secured by a pledge of collateral acceptable to the Secretary of the Treasury as security for tax and loan accounts, and (2) obligations of the United States and of agencies of the United States: *Provided*, That the authority granted under this section shall not be construed as requiring the Secretary of the Treasury to invest any or all of the cash balance held in any particular account: *Provided further*, That the authority granted under this section shall not be construed as permitting the Secretary of the Treasury to require the sale of such obligations by any particular person, dealer, or financial institution. Investments in obligations of depositaries maintaining such accounts shall be made at rates of interest prescribed by the Secretary of the Treasury, after taking into consideration prevailing market rates of interest.

* * *

SEC. 4. (a) The Bretton Woods Agreements Act (22 U.S.C. 286–286K-2) is amended–

(1) by striking out clause (g) of the first sentence of section 5, and by inserting immediately after clause (f) the following: "or (g) approve either the disposition of more than 25 million ounces of Fund gold for the benefit of the Trust Fund established by the Fund on May 6, 1976, or the establishment of any additional trust fund whereby resources of the International Monetary Fund would be used for the special benefit of a single member, or of a particular segment of the membership, of the fund.":

(2) (A) by inserting "(a)" immediately after "SEC. 14."; and

(B) by inserting at the end of section 14 the following new subsection:

"(b) The President shall, upon the request of any committee of the Congress with legislative or oversight jurisdiction over monetary policy or the International Monetary Fund, provide to such committee any appropriate information relevant to that committee's jurisdiction which is furnished to any department or agency of the United States by the International Monetary Fund. The President shall comply with this provision consistent with United States membership obligations in the International Monetary Fund and subject to such limitations as are appropriate to the sensitive nature of the information.".

(b) (1) Section 10(a) of the Gold Reserve Act of 1934 (31 U.S.C. 822a(a)) is amended—

(A) by striking out "to and" immediately following "necessary" and inserting in lieu thereof a comma; and

(B) by inserting immediately after "International Monetary Fund" the following: "regarding orderly exchange arrangements and a stable system of exchange rates: *Provided, however*, That no loan or credit to a foreign government or entity shall be extended by or through such Fund for more than six months in any twelve-month period unless the President provides a written determination to, the Congress that unique or exigent circumstances make such loan or credit necessary for a term greater than six months".

(2) Section 10(b) of the Gold Reserve Act of 1934 (31 U.S.C. 822a(b)) is amended by striking out the phrase "stabilizing the exchange value of the dollar" in the fourth sentence thereof and inserting in lieu thereof the phrase "the purposes prescribed by this section".

(c) The joint resolution entitled "Joint resolution to assure uniform value to the coins and currencies of the United States", approved June 5, 1933 (31 U.S.C. 463), shall not apply to obligations issued on or after the date of enactment of this section.

Approved October 28, 1977.

Pub. L. No. 97-258, 96 Stat. 985 (1982)
(codified at 31 U.S.C. §5118(d)(2))

(c) With the approval of the President, the Secretary may prescribe regulations the Secretary considers necessary to carry out this section.

§ 5118. Gold clauses and consent to sue

(a) In this section—

(1) "gold clause" means a provision in or related to an obligation alleging to give the obligee a right to require payment in—

(A) gold;

(B) a particular United States coin or currency; or

(C) United States money measured in gold or a particular United States coin or currency.

(2) "public debt obligation" means a domestic obligation issued or guaranteed by the United States Government to repay money or interest.

(b) The United States Government may not pay out or deliver any gold coin. A person lawfully holding United States coins and currency may present the coins and currency to the Secretary of the Treasury for exchange (dollar for dollar) for other United States coins and currency that may be lawfully held. The Secretary shall

make the exchange under regulations prescribed by the Secretary.

(c)(1) The Government withdraws its consent given to anyone to assert against the Government, its agencies, or its officers, employees, or agents, a claim—

(A) on a gold clause public debt obligation or interest on the obligation;

(B) for United States coins or currency; or

(C) arising out of the surrender, requisition, seizure, or acquisition of United States coins or currency, gold, or silver involving the effect of validity of a change in the metallic content of the dollar or in a regulation about the value of money.

(2) Paragraph (1) of this subsection does not apply to a proceeding in which no claim is made for payment or credit in an amount greater than the face or nominal value in dollars or public debt obligations or United States coins or currency involved in the proceeding.

(3) Except when consent is not withdrawn under this subsection, an amount appropriated for payment on public debt obligations and for United States coins and currency may be expended only dollar for dollar.

(d)(1) In this subsection, "obligation" means any obligation (except United States currency) payable in United States money.

(2) An obligation issued containing a gold clause or governed by a gold clause is discharged on payment (dollar for dollar) in United States coin or currency that is legal tender at the time of payment. This paragraph does not apply to an obligation issued after October 27, 1977.

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31 U.S.C. §5112(h)

§5112. Denominations, specifications, and design of coins

(a) The Secretary of the Treasury may mint and issue only the following coins:

(1) a dollar coin that is 1.043 inches in diameter and weighs 8.1 grams.

(2) a half dollar coin that is 1.205 inches in diameter and weighs 11.34 grams.

(3) a quarter dollar coin that is 0.955 inch in diameter and weighs 5.67 grams.

(4) a dime coin that is 0.705 inch in diameter and weighs 2.268 grams.

(5) a 5-cent coin that is 0.835 inch in diameter and weighs 5 grams.

(6) Except as provided under subsection (c) of this section, a one-cent coin that is 0.75 inch in diameter and weighs 3.11 grams.

(b) The dollar, half dollar, quarter dollar, and dime coins are clad coins with 3 layers of metal. The 2 identical outer layers are an alloy of 75 percent copper and 25 percent nickel. The inner layer is copper. The outer layers are metallurgically bonded to the inner layer and weigh at least 30 percent of the weight of the coin. The 5-cent coin is an alloy of 75 percent copper and 25 percent nickel. In minting 5-cent coins, the Secretary shall use bars that vary not more than 2.5 percent from the percent of nickel required. Except as provided under subsection (c) of this section, the one-cent coin is an alloy of 95 percent copper and 5 percent zinc. The specifications for alloys are by weight.

(c) The Secretary may prescribe the weight and the composition of copper and zinc in the alloy of the one-cent

coin that the Secretary decides are appropriate when the Secretary decides that a different weight and alloy of copper and zinc are necessary to ensure an adequate supply of one-cent coins to meet the needs of the United States.

(d)(1) United States coins have the inscription "In God We Trust". The obverse side of each coin has the inscription "Liberty". The reverse side of each coin has the inscriptions "United States of America" and "E Pluribus Unum" and a designation of the value of the coin. The design on the reverse side of the dollar, half dollar, and quarter dollar is an eagle. The eagle on the reverse side of the dollar is the symbolic eagle of Apollo 11 landing on the moon. The obverse side of the dollar has the likeness of Susan B. Anthony. The coins have an inscription of the year of minting or issuance. However, to prevent or alleviate a shortage of a denomination, the Secretary may inscribe coins of the denomination with the year that was last inscribed on coins of the denomination.

(2) The Secretary shall prepare the devices, models, hubs, and dies for coins, emblems, devices, inscriptions, and designs authorized under this chapter [31 USCS §§5101 et seq.]. The Secretary may adopt and prepare new designs or models of emblems or devices that are authorized in the same way as when new coins or devices are authorized. The Secretary may change the design or die of a coin only once within 25 years of the first adoption of the design, model, hub, or die for that coin. The Secretary may procure services under section 3109 of title 5 [5 USCS § 3109] in carrying out this paragraph.

(e) Notwithstanding section 5111(a)(1) of this title [31 USCS § 5111(a)(1)] and subsections (a) and (b) of this

section, the Secretary may mint and issue not more than 150,000,000 dollar coins that–

(1) are 1.5 inches in diameter and weigh 24.592 grams;

(2) have 2 identical outer layers of an alloy of 80 percent silver and 20 percent copper that are metallurgically bonded to an inner layer of an alloy of silver and copper;

(3) contain 9.837 grams of silver and 14.755 grams of copper;

(4) have the likeness of Dwight David Eisenhower on the obverse side;

(5) have the inscription of a year decided by the Secretary; and

(6) except as provided in this paragraph, have the inscriptions and designs provided for the dollar in subsection (d)(1) of this section.

(f)(1) Notwithstanding this section and section 5111(a)(1) of this title [31 USCS § 5111(a)(1)], the Secretary shall mint and issue, in quantities the Secretary decides are necessary to meet public demand (but not more than 10,000,000), half dollar coins that–

(A) are 30.61 millimeters in diameter and weigh 12.5 grams;

(B) are an alloy of 90 percent silver and 10 percent copper;

(C) have a design on each side of the coin, decided by the Secretary, symbolizing the 250th anniversary of the birth of George Washington; and

(D) have a designation of the value of the coin and an inscription of the year "1982" and the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(2) The Secretary shall sell the coins minted under this subsection to the public at a price equal to the cost of minting and distributing the coins (including labor,

materials, dies, use of machinery, promotion, and overhead expenses) plus a surcharge of not more than 20 percent of the cost. The Secretary shall deposit an amount equal to the surcharge received under this paragraph in the Treasury to be used only to reduce the national debt.

(3) The Secretary may not mint coins under this subsection after December 31, 1983.

(4) Amounts necessary to carry out this subsection may be appropriated.

(Sept. 13, 1982, P. L. 97-258, § 1, 96 Stat. 981; Jan. 12, 1983, P. L. 97-452, § 1(20), 96 Stat. 2477.)

§ 5112. Denominations, specifications, and design of coins

(a) The Secretary of the Treasury may mint and issue only the following coins:

(1)-(6) [Unchanged]

(7) A fifty dollar gold coin that is 32.7 millimeters in diameter, weighs 33.931 grams, and contains one troy ounce of fine gold.

(8) A twenty-five dollar gold coin that is 27.0 millimeters in diameter, weighs 16.966 grams, and contains one-half troy ounce of fine gold.

(9) A ten dollar gold coin that is 22.0 millimeters in diameter, weighs 8.483 grams, and contains one fourth troy ounce of fine gold.

(10) A five dollar gold coin that is 16.5 millimeters in diameter, weighs 3.393 grams, and contains one-tenth troy ounce of fine gold.

(b) The dollar, half dollar, quarter dollar, and dime coins are clad coins with 3 layers of metal. The 2 identical outer layers are an alloy of 75 percent copper and 25 percent nickel. The inner layer is copper. The outer layers

are metallurgically bonded to the inner layer and weigh at least 30 percent of the weight of the coin. The 5-cent coin is an alloy of 75 percent copper and 25 percent nickel. In minting 5-cent coins, the Secretary shall use bars that vary not more than 2.5 percent from the percent of nickel required. Except as provided under subsection (c) of this section, the one-cent coin is an alloy of 95 percent copper and 5 percent zinc. In minting gold coins, the Secretary shall use alloys that vary not more than 0.1 percent from the percent of gold required. The specifications for alloys are by weight.

(c) [Unchanged]

(d)(1) United States coins shall have the inscription "In God We Trust". The obverse side of each coin shall have the inscription "Liberty". The reverse side of each coil shall have the inscriptions "United States of America" and "E Pluribus Unum" and a designation of the value of the coin. The design on the reverse side of the dollar, half dollar, and quarter dollar is an eagle. The eagle on the reverse side of the dollar is the symbolic eagle of Apollo 11 landing on the moon. The obverse side of the dollar has the likeness of Susan B. Anthony. The coins have an inscription of the year of minting or issuance. However, to prevent or alleviate a shortage of a denomination, the Secretary may inscribe coins of the denomination with the year that was last inscribed on coils of the denomination.

(2) [Unchanged]

(e) Notwithstanding any other provision of law, the Secretary shall mint and issue, in quantities sufficient to meet public demand, coins which—

(1) are 40.6 millimeters in diemater and weigh 31.103 grams;

(2) contain .999 fine silver;

(3) have a design—

(A) symbolic of Liberty on the obverse side; and

(b) of an eagle on the reverse side;

(4) have inscriptions of the year of minting or issuance, and the words "Liberty", "In God We Trust", "United States of America", "1 Oz. Fine Silver", "E Pluribus Unum", and "One Dollar"; and

(5) have reeded edges.

(f) Silver coins. (1) The Secretary shall sell the coins minted under subsection (e) to the public at a price equal to the market value of the bullion at the time of sale, plus the cost of minting, marketing, and distributing such coins (including labor, materials, dies, use of machinery, and promotional and overhead expenses).

(2) Bulk Sales. The Secretary shall make bulk sales of the coins minted under subsection (e) at a reasonable discount.

(3) Numismatic items. For purposes of section 5132(a)(1) of this title, all coins minted under subsection (e) shall be considered to be numismatic items.

(g) For purposes of section 5132(a)(1) of this title, all coins minted under subsection (e) of this section shall be considered to be numismatic items.

(h) The coins issued under this title shall be legal tender as provided in section 5103 of title 31, United States Code.

(i)(1) Notwithstanding section 5111(a)(1) of this title, the Secretary shall mint and issue the gold coins described in paragraphs (7), (8), (9), and (10) of subsection (a) of this section, in quantities sufficient to meet public demand, and such gold coins shall—

(A) have a design determined by the Secretary, except that the fifty dollar gold coin shall have—

(i) on the obverse side, a design symbolic of Liberty; and

(ii) on the reverse side, a design representing a family of eagles, with the male carrying an olive branch and flying above a nest containing a female eagle and hatchlings;

(B) have inscriptions of the denomination, the weight of the fine gold content, the year of minting or issuance, and the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum"; and

(C) have reeded edges.

(2)(A) The secretary shall sell the coins minted under this subsection to the public at a price equal to the market value of the bullion at the time of sale, plus the cost of minting, marketing, and distributing such coins (including labor, materials, dies, use of machinery, and promotional and overhead expenses).

(B) The Secretary shall make bulk sales of the coins minted under this subsection at a reasonable discount.

(3) For purposes of section 5132(a)(1) of this title, all coins minted under this subsection shall be considered to be numismatic items.

(4)(A) Notwithstanding any other provision of law and subject to subparagraph (B), the Secretary of the Treasury may change the diameter, weight, or design of any coin minted under this subsection or the fineness of the gold in the alloy of any such coin if the Secretary determines that the specific diameter, weight, design, or fineness of gold which differs from that otherwise required by law is appropriate for such coin.

(B) The Secretary may not mint any coin with respect to which a determination has been made by the Secretary under subparagraph (A) before the end of the 30-day period beginning on the date a

notice of such determination is published in the Federal Register.

(j) General waiver of procurement regulations. (1) In general. Except as provided in paragraph (2), no provision of law governing procurement or public contracts shall be applicable to the procurement of goods or services necessary for minting, marketing, or issuing any coin authorized under paragraph (7), (8), (9), or 10 of subsection (a) or subsection (e), including any proof version of any such coin.

(2) Equal employment opportunity. Paragraph (1) shall not relieve any person entering into a contract with respect to any coin referred to in such paragraph from complying with any law relating to equal employment opportunity.

(As amended July 9, 1985, P. L. 99-61, Title II, § 202, 99 Stat. 115; Dec. 17, 1985, P. L. 99-185, § 2(a), (b), 99 Stat. 1177; Mar. 31, 1988, P. L. 100-274, §§ 4(a), 6, 102 Stat. 50; Oct. 6, 1992, P. L. 102-390, Title II, Subtitle B, §§ 226(a), 227, 228, 106 Stat. 1630.)

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31 U.S.C. §5118(d)(2)

§ 5118. Gold clauses and consent to sue

(a) In this section—

(1) "gold clause" means a provision in or related to an obligation alleging to give the obligee a right to require payment in—

(A) gold;

(B) a particular United States coin or currency; or

(C) United States money measured in gold or a particular United States coin or currency.

(2) "public debt obligation" means a domestic obligation issued or guaranteed by the United States Government to repay money or interest.

(b) The United States Government may not pay out or deliver any gold coin. A person lawfully holding United States coins and currency may present the coins and currency to the Secretary of the Treasury for exchange (dollar for dollar) for other United States coins and currency that may be lawfully held. The Secretary shall make the exchange under regulations prescribed by the Secretary.

(c)(1) The Government withdraws its consent given to anyone to assert against the Government, its agencies, or its officers, employees, or agents, a claim—

(A) on a gold clause public debt obligation or interest on the obligation;

(B) for United States coins or currency; or

(C) arising out of the surrender, requisition, seizure, or acquisition of United States coins or currency, gold, or silver involving the effect or validity of a change in the metallic content of the dollar or in a regulation about the value of money.

(2) Paragraph (1) of this subsection does not apply to a proceeding in which no claim is made for payment or credit in an amount greater than the face or nominal value in dollars of public debt obligations or United States coins or currency involved in the proceeding.

(3) Except when consent is not withdrawn under this subsection, an amount appropriated for payment on public debt obligations and for United States coins and currency may be expended only dollar for dollar.

(d)(1) In this subsection, "obligation" means any obligation (except United States currency) payable in United States money.

(2) An obligation issued containing a gold clause or governed by a gold clause is discharged on payment (dollar for dollar) in United States coin or currency that is legal tender at the time of payment. This para-

graph does not apply to an obligation issued after October 27, 1977.

(Sept. 13, 1982, P. L. 97-258, § 1, 96 Stat. 985.)

APPENDIX F

EXAMPLES OF CORPORATE TRANSACTIONS ADMITTED BY BURLINGTON NORTHERN

- In May 1981, Burlington Northern underwent a "reverse triangular merger" and a name change. Burlington Northern Inc. ("BNI") formed a wholly owned subsidiary named Burlington Northern Holding Company ("Holding Company"), which in turn formed a wholly owned subsidiary named Burlington Northern Transportation Company ("BNTC"). BNTC was merged into BNI. BNI stock was exchanged for stock in Holding Company, and stock in BNTC was canceled. BNI's name then was changed to Burlington Northern Railroad Company, and the name of Holding Company was changed to Burlington Northern Inc.
- In December 1981, the Colorado and Southern Railway Company was merged into Burlington Northern.
- In December 1982, the Fort Worth and Denver Railway Company was merged into Burlington Northern.
- In January 1986, the Galveston Terminal Railway Company was merged into Burlington Northern.
- In November 1987, the Lake Superior Terminal and Transfer Railway Company ("LST&T") dissolved, and Burlington Northern, which had owned a majority of LST&T's stock, was granted an undivided 4/6 interest in the properties owned by LST&T.

APPENDIX G

EXAMPLES OF ADDITIONAL CORPORATE TRANSACTIONS SUBMITTED BY THE BONDHOLDERS[1]

- In or about November 1977 (with regulatory approval in 1980), the St. Louis-San Francisco Railway Company was merged into Burlington Northern. *See Burlington N. Inc. - Control & Merger — St. Louis-San Francisco Ry. Co.*, 360 I.C.C. 784 (1980).
- In 1983, Burlington Northern acquired El Paso Natural Gas Company.
- In 1985, Burlington Northern purchased Southland Royal Company.
- In 1985, Burlington Northern offered to purchase Northern Pacific Gold Bonds for cash.[2]
- In 1988, Burlington Northern transferred billions of dollars of assets, which had been security for the Gold Bonds, to a subsidiary named Burlington Resources Inc. and subsequently spun it off to Burlington Northern's shareholders.[3]

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[1] *See* Lynn M. Voskuil, *Burlington Northern Inc., in* 5 *International Directory of Company Histories* 425 (Adele Hast, ed., 1992). The Bondholders submitted the related materials to demonstrate to the Court that discovery is necessary to resolve the complex issues in this lawsuit. By submitting these materials, the Bondholders did not intend to lend any credence to Burlington Northern's suggestion that this matter is ripe for summary disposition.

[2] *See* Burlington Northern Cash Purchase Offer, dated April 23, 1985.

[3] *See* Burlington Resources Inc. stock offering prospectus, dated July 7, 1988. The Resource Properties were given to the

[footnote continued]

- In 1990, Burlington Northern offered to exchange new bonds for the Gold Bonds.[4]

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railroads by the United States. These "Land Grants" are discussed in Peter Lynch, *One Up on Wall Street* (Simon & Schuster 1989):

> Many of the publicly traded railroads such as Burlington . . . are land rich, dating back to the nineteenth century when the government gave away half the country as a sop to the railroad tycoons. These companies have the oil and gas rights, the mineral rights, and the timber rights as well.

Id. at 116-17.

> Not only do[es] Burlington Northern . . . own vast amounts of land, as I mentioned before, but it's all carried on the books at a cost of next to nothing.

Id. at 210.

[4]*See* Burlington Northern Prospectus and Consent Solicitation, dated November 8, 1990. Although Burlington Northern was purchasing Gold Bonds for cash and exchanging new bonds for Gold Bonds, the 1985 cash purchase offer and the prospectus for the 1990 exchange offering contain no mention of gold clauses.

APPENDIX H

GENERAL LIEN MORTGAGE.

Northern Pacific Railway Company

TO

The Farmers' Loan and Trust Company,

Trustee.

Dated November 10, 1896

* * *

ARTICLE TWELVE.

SEC. 1. All the covenants, stipulations, promises and agreements in this indenture contained, by or in behalf of the Railway Company, shall bind its successors and assigns, whether so expressed or not.

SEC. 2. Nothing contained in this indenture, or in any bond hereby secured, shall prevent any lawful consolidation or merger of the Railway Company with any other corporation, or any conveyance and transfer, subject to the continuing lien of this indenture and to all the provisions thereof, of all the mortgaged and pledged premises as an entirety to a railroad corporation at that time existing under and by virtue of the laws of the United States or of any State thereof, and lawfully entitled to acquire the same; provided, however, that such consolidation, merger or sale shall not impair the lien and security of this indenture, or any of the rights or powers of the Trustee, or of the bondholders hereunder, and that, upon any such consolidation, merger or sale, the due and

punctual payment of the principal and interest of all of said bonds according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this indenture, shall be assumed by the corporation formed by such consolidation or merger or purchasing as aforesaid.

SEC. 3. In case the Railway Company, pursuant to Section 2 of this Article, shall be consolidated or merged with any other corporation, or shall sell, convey and transfer, subject to this indenture, all the mortgaged and pledged premises as an entirety as aforesaid, the successor corporation formed by such consolidation or into which the Railway Company shall have been merged, or which shall have purchased and received a conveyance and transfer as aforesaid, upon executing and causing to be recorded an indenture with the Trustee, satisfactory to the Trustee, whereby such successor corporation shall assume the due and punctual payment of the principal and interest of said bonds and the performance of all the covenants and conditions of this indenture, shall succeed to, and be substituted for, the Railway Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the first part, and such successor corporation thereupon may cause to be signed and may issue, either in its own name or in the name of the Northern Pacific Railway Company, any or all of such bonds which shall not theretofore have been signed by the Northern Pacific Railway Company and delivered to the Trustee, * * *

GENERAL GOLD BOND MORTGAGE

GREAT NORTHERN RAILWAY COMPANY

TO

THE FIRST NATIONAL BANK OF THE CITY OF NEW YORK,

TRUSTEE

INDENTURE

DATED JANUARY 1, 1921

* * *

SEC. 2. Nothing contained in this indenture, or in any General Mortgage bond, shall prevent any consolidation or merger of the Railway Company with any other corporation, or any sale, subject ot the continuing lien of this indenture and to all the provisions thereof, of all the property subject to this indenture, as an entirety, to a railway corporation at that time existing under and by virtue of the laws of any state or states, or of the United States, and empowered to acquire the same; *provided, however,* that such consolidation, merger or sale shall be upon such terms as to preserve and not to impair the lien and security of this indenture, or any of the rights or powers of the Trustee or of the holders of the General Mortgage bonds.

In case the Railway Company shall be consolidated or merged with any other corporation, or shall sell all the property subject to this indenture as an entirety, as aforesaid, the corporation formed by such consolidation, or the corporation into which the Railway Company shall have been merged, or the corporation which shall have purchased as aforesaid, shall execute and cause to be recorded an instrument satisfactory to the Trustee, and to which the Trustee shall be a party, whereby such successor or purchasing corporation shall assume the due and punctual payment of the principal and interest of the General Mortgage bonds and the performance of all the covenants and conditions of this indenture, or any supplement hereto, and thereupon shall succeed to, and be substituted for, the Railway Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the first part; and such successor or purchasing corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Railway Company any or all such bonds which theretofore shall not have been signed by the Railway Company and delivered to the Trustee; * * *

APPENDIX I

BURLINGTON NORTHERN RAILROAD COMPANY
TO
BANKERS TRUST COMPANY,

Trustee.

SUPPLEMENTAL INDENTURE
Dated as of May 14, 1981

TO

NORTHERN PACIFIC RAILWAY COMPANY
PRIOR LIEN MORTGAGE
Dated November 10, 1896

Providing for the Continuation of Obligations
by Reason of the Change of Name of Burlington
Northern Inc. to Burlington Northern Railroad Company

* * *

WITNESSETH:

WHEREAS, Nortnern Pacific Railway Company, mortgagor, on the tenth day of November, 1896, did make, execute and deliver to The Mercantile Trust Company, Trustee, its Prior Lien Mortgage to secure the payment of the principal of and interest on its Prior Lien Railway and Land Grant Gold Bonds, due January 1, 1997 (hereinafter called the "Bonds"); and

WHEREAS, By Supplemental Indenture dated March 2, 1970, Burlington Northern Inc., as successor in interest and title by merger to Northern Pacific Railway Company, assumed and agreed to pay, perform and observe all of the mortgagors covenants and conditions contained in the Prior Lien Mortgage; and

WHEREAS, By Agreement of Merger and Plan of Reorganization dated April 2, 1981 ("Agreement"), made by and among Burlington Northern Inc., Burlington Northern Transportation Company, and Burlington Northern Holding Company, on the effective date of the transactions described in the Agreement, viz: May 14, 1981, inter alia, the corporate name of Burlington Northern Inc. is changed to Burlington Northern Railroad Company; a conformed true copy of the Agreement is attached hereto as Appendix A, incorporated herein and made a part hereof, specific reference to which is hereby made; and

WHEREAS, All of the requisite action described in the Agreement has been taken, and the said change of corporate name so provided for is being accomplished contemporaneously with the execution of this Supplemental Indenture, and all acts, things and deeds necessary to authorize the unbroken continuity of the mortgagor's obligations under the Prior Lien Mortgage by Burlington Northern Railroad Company, and to make this Supplemental Indenture, when executed by the parties hereto, a valid and binding amendent to the Prior Lien Mortgage, have been done, performed and completed.

NOW, THEREFORE, in consideration of the premises and of the sum of Ten Dollars ($10.00) paid by the Trustee to Burlington Northern Railroad Company, receipt of which is hereby acknowledged, to record the change in corporate name, to further secure, and evidence the

continuing undertaking and obligation of payment, performance and observance of all of the covenants and conditions contained in the Prior Lien Mortgage, the parties hereto do hereby covenant and agree as follows:

SECTION 1. Burlington Northern Railroad Company is hereby acknowledged as the Successor Mortgagor under the Prior Lien Mortgage, and as such Successor Mortgagor, Burlington Northern Railroad Company in all respects ratifies, confirms and continues uninterrupted the assumption of obligations under the Prior Lien Mortgage made by Burlington Northern Inc. in the March 2, 1970 Supplemental Indenture. Further Burlington Northern Railroad Company hereby assumes the due and punctual payment of the principal of and interest on all the Bonds, according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of the Prior Lien Mortgage, so that in accordance with the provisions of ARTICLE TWELVE of the Prior Lien Mortgage, Burlington Northern Railroad Company shall succeed to and be substituted for Burlington Northern Inc., with the same effect as if Burlington Northern Railroad Company had been named in the Prior Lien Mortgage as the party of the first part thereto, and had duly executed and delivered the same.

* * *